

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 00-0468  
Sales and Use Tax  
For the Years 1997-1999**

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**ISSUES**

**I.     Sales and Use Tax – Prepaid Telephone Calling Cards**

**Authority:**   IC 6-2.5-4-13; IC 6-2.5-2-1.

Taxpayer protests the Department's assessment of tax on prepaid telephone calling cards.

**STATEMENT OF FACTS**

The taxpayer operates two service stations in Indiana. In addition to gasoline and diesel fuel, the service stations also sell convenience store type items (e.g., cigarettes, grocery items, lottery tickets, etc.). The taxpayer's protest involves one of the items that it sells—namely, prepaid telephone cards.

**I.     Sales and Use Tax – Prepaid Telephone Calling Cards**

**DISCUSSION**

Prepaid telephone cards are taxed as a retail sale in Indiana, as IC 6-2.5-4-13 makes clear:

A person is a retail merchant making a retail transaction when a person sells:

- (1) a prepaid telephone calling card at retail;
- (2) a prepaid telephone authorization number at retail;
- (3) the reauthorization of a prepaid telephone calling card; or
- (4) the reauthorization of a prepaid telephone authorization number.

The taxpayer, which began selling prepaid telephone calling cards in 1998, stated in its protest letter to the Department that

[t]he taxpayer was not aware of the tax law requiring the sales of prepaid phone cards to be taxable, and were under the impression the tax was paid by the company when they purchased it and therefore not subject to sales tax.

In other words, the taxpayer's argument is that since it was unaware of the law that it therefore should not have to pay the tax that is due from its failure to properly collect and remit.

The taxpayer, as a retail merchant, has a *duty* to collect and remit sales tax to the State of Indiana:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. *The retail merchant shall collect the tax as agent for the state. (Emphasis added)*

IC 6-2.5-2-1.

In summary: (1) the taxpayer is a retail merchant; (2) the taxpayer made retail sales of taxable items (prepaid telephone calling cards); and (3) the taxpayer failed to collect and remit the tax as required. Finally, the taxpayer's argument is that it was ignorant of the appropriate law.

Ignorance of Indiana's law is not a valid defense (45 IAC 15-11-2(b) echoes this principle when it notes, with regards to tax penalties, "[I]gnorance of the listed tax laws, rules and/or regulations is treated as negligence." And as quoted above, IC 6-2.5-2-1 states the taxpayer *shall* collect the tax for the state). Taxpayer cited no law that would excuse it from its duty to collect and remit the tax.

### **FINDING**

Taxpayer's protest is denied.

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